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Attorneys for CBL & Associates Management, Inc.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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In re	:	Chapter 11
	:	
BED BATH & BEYOND INC., <i>et al.</i> ,	:	
	:	Case No. 23-13359 (VFP)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
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CBL & ASSOCIATES MANAGEMENT, INC.’S
LIMITED OBJECTION TO DEBTORS’ STATED CURE AMOUNTS

CBL & Associates Management, Inc. (“CBL”), managing agent to three (3) landlords (the “Landlords”) of Debtors, by and through counsel, hereby files this Limited Objection (the “Objection”) to Debtors’ *Notice to Contract Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 714] (the “Cure Notice”) and, in support thereof, states as follows:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

1. On April 23, 2023 (the “Petition Date”), Bed Bath & Beyond Inc. and certain of its affiliates (the “Debtors”), filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”).

2. Debtors have continued to operate their business and manage their properties as debtor’s-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.²

3. On April 25, 2023, the Court issued its *Order (I) Approving the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief*.(related document:29 Motion re: Debtors' Motion for Entry of an Order (I)(A) Approving the Auction and Bidding Procedures; (B) Approving Stalking Horse Bid Protections; (C) Scheduling Bid Deadlines and an Auction; (D) Approving the Form and Manner of Notice Thereof; (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets, and (D) Granting Related Relief Filed by Michael D. Sirota on behalf of Bed Bath & Beyond Inc.. [Docket No. 92] (the “Bidding Procedures Order”).

4. Pursuant to the procedures for potential sale of certain assets of Debtors under the Bidding Procedures Order, Debtor filed the Cure Notice on June 13, 2023.

5. Prior to the Petition Date, Debtors entered into certain agreements to lease premises’ and/or agreements regarding obligations and restrictions related to such premises (the “Premises”) from the CBL pursuant to unexpired leases of nonresidential real property (the

² Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

“Leases”) and amendments, easement, restriction and operating agreements appurtenant to certain real property owned by the Debtors or third-parties (the “Agreements”).

6. The Leases are leases “of real property in a shopping center” as that term is used in Section 365(b)(3). *See In re Joshua Slocum LTD*, 922 F.2d 1081 (3d. Cir. 1990).

7. As of the date of this Objection, the Leases are not subject to a rejection motion or rejection order.

8. The Leases appear on the Cure Notice.

CURE CLAIM OBJECTION

9. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

10. Section 365(b)(1) includes compensation to landlords for sums incurred for attorneys’ fees and expenses. The Lease and Agreements provide for recovery of attorneys’ fees and expenses. CBL hereby objects to assumption of the Lease and Agreements listed in the Cure Notice absent payment of attorneys’ fees and expenses.

11. As of the date of this Objection, CBL states the following cure amounts apply to the below Premises. To the extent these amounts differ from Debtors’ amounts listed on the Cure Notice, CBL objects to those proposed cure amounts. CBL herein reserves the right to file a

supplementary cure objection regarding additional Leases and Agreements, or for additional amounts accrued but not yet billed under any Lease or Agreement.

12. *Table 1* identifies the cure amounts for the Leases (the “Cure Amounts”). A true and correct copy of CBL’s Accounts Receivable Aging Report for the Leases identified above supporting the actual Leases and Agreements CBL Cure Amounts contained in *Table 1* is attached hereto and incorporated as **Exhibit A**.

TABLE 1:

Landlord	Debtors' Stated Cure	CBL Cure Amounts ³
Coastal Grand CMBS, LLC	\$0.00	\$30,477.93
Southaven Town Center II, LLC	\$74.24	\$493.77
The Shoppes at Hamilton Place, LLC	\$0.00	\$6,484.08

13. CBL further objects to the assumption of the Lease absent payment of all cure amounts owed thereunder through the effective date of assumption, including any amounts that will become due or be invoiced on or after June 14, 2023 (including, but not limited to, additional amounts, not yet known, that accrued following June 14 2023, such as year-end adjustments to various items including, but not limited to, real estate taxes, common area maintenance, percentage rent and insurance), as well as attorneys’ fees and costs.

14. Further, CBL requests an award of attorneys’ fees and expenses incurred in the filing of this motion in an amount not less than Five Hundred and 00/100 (\$500.00).

³ Such Cure Amounts are subject to the attorneys’ fees and charges requested in Paragraph 15 herein.

JOINDER

15. In addition to the foregoing, CBL further joins in the objections filed by Debtors' other landlords to the extent that such objections are not inconsistent with the relief requested in this Objection.

RESERVATION OF RIGHTS

16. CBL hereby reserves its rights to make such other and further objections as may be appropriate to the Lease, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

17. For the reasons set forth above, CBL respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Lease or Agreements affirmatively require Debtors to pay all amounts accrued but not yet billed following June 14, 2023, including attorneys' fees and expenses; and (iii) grant CBL such further relief as it deems proper.

Dated: June 20, 2023

Respectfully Submitted,

/s/ David Stauss

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Attorneys for CBL & Associates Management, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2023, I caused a copy of the foregoing to be served by electronic means through the ECF system to all registered ECF participants on the creditor matrix as well as by e-mail on the following parties:

<p>Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Joshua A. Sussberg, P.C., Emily E. Geier, P.C., Derek I. Hunter, and Ross J. Fiedler Email: joshua.sussberg@kirkland.com; emily.geier@kirkland.com derek.hunter@kirkland.com</p>	<p>Cole Schotz P.C. Michael D. Sirota, Esq. Warren A. Usatine, Esq., and Felice R. Yudkin, Esq. 25 Main Street Hackensack New Jersey 07601 email: msirota@coleschotz.com wusatine@coleschotz.com fyudkin@coleschotz.com</p>
<p>Davis Polk & Wardwell LLP, 450 Lexington Avenue New York, New York 10017 Attn: Marshall S. Huebner (marshall.huebner@davispolk.com), Adam L. Shpeen (adam.shpeen@davispolk.com), Steven Z. Szanzer (steven.szanzer@davispolk.com) and Michael Pera (michael.pera@davispolk.com</p>	<p>Proskauer Rose LLP Eleven Times Square New York, NY 10036 Attn: David M. Hillman (DHillman@proskauer.com) and Megan R. Volin (MVolin@proskauer.com</p>
<p>Office of the United States Trustee Andrew R.Vara, U.S. Trustee, Regions 3 & 9 Fran B. Steele, Esq. Fran.B.Steele@usdoj.gov</p>	<p>Pachulski Stang Ziehl & Jones LLP Robert J. Feinstein Bradford J. Sandler Paul J. Labov Colin R. Robinson 780 Third Avenue, 34th Floor New York, NY 10017 rfeinstein@pszjlaw.com bsandler@pszjlaw.com plabov@pszjlaw.com crobinson@pszjlaw.com</p>

Overstock.com, Inc. 799 W. Coliseum Way Midvale, UT 84047 Attention: Chief Legal Officer and Corporate Secretary Email: gnickle@overstock.com	Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Scott K. Charles Michael S. Benn Gordon S. Moodie E-Mail: SKCharles@wlrk.com MSBenn@wlrk.com GSMoodie@wlrk.com
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/s/ David Stauss

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